

Honorable Robert S. Lasnik

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

THE SIGN POST, INC., a Washington
corporation,

Plaintiff,

vs.

BOB'S BURGER AND BREW OF
WASHINGTON, LLC, a Washington limited
liability company; RICK KILDALL; and BOB
KILDALL,

Defendants.

NO. CV09-1420 RSL

DEFENDANTS JEFF ROBERTS AND
YAKIMA BOB'S BURGER AND
BREW LLC'S ANSWER TO
PLAINTIFF'S FIRST AMENDED
COMPLAINT FOR COPYRIGHT
INFRINGEMENT

Defendants Jeff Roberts and Yakima Bob's Burger and Brew LLC (collectively "Yakima Bob's), by way of answer to Plaintiff's First Amended Complaint for Copyright Infringement, admit, deny and allege as follows:

I. NATURE OF CASE

1.1 Yakima Bob's admits that plaintiff seeks recovery for alleged copyright infringement.

1.2 Yakima Bob's admits that plaintiff manufactures and installs signs. Yakima Bob's denies each and every remaining allegation contained in paragraph 1.2.

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II. JURISDICTION AND VENUE

2 Answering paragraphs 2.1 through 2.3, Yakima Bob's admits that jurisdiction and
venue are proper in this Court. Yakima Bob's admits that its principal place of business is in the
State of Washington and that the individual defendants reside in the State of Washington. Yakima
Bob's denies the remaining allegations in paragraphs 2.1 though 2.3 of the Complaint, inclusive.

III. PARTIES

3.1 Yakima Bob's admits that plaintiff is incorporated in the State of Washington and
has its principal place of business in Whatcom County, Washington. Yakima Bob's denies the
remaining allegation contained in paragraph 3.1.

3.2 Yakima Bob's admits Bob's Burgers and Brew of Washington, LLC (BBB) is a
Washington limited liability company, with its principal place of business in Lynden, Washington,
and that it operates restaurants in the State of Washington. Yakima Bob's denies each and every
remaining allegation contained in paragraph 3.2.

3.3 Yakima Bob's admits that defendants Bob and Rick Kildall are member of BBB.
Yakima Bob's denies each and every remaining allegation contained in paragraph 3.3.

3.4 Yakima Bob's lacks information and belief with respect to the allegations in
paragraph 3.4 and therefore denies them.

3.5 Yakima Bob's lacks information and belief with respect to the allegations in
paragraph 3.5 and therefore denies them.

3.6 Yakima Bob's admits the allegations in paragraph 3.6.

3.7 Yakima Bob's admits that Jeff Roberts is a Yakima Bob's member. Yakima Bob's
denies the remaining allegations in paragraph 3.7.

IV. FACTS

4.1 Yakima Bob's admits that plaintiff manufactures and installs signs. Yakima Bob's
denies each and every remaining allegation contained in paragraph 4.1.

1 4.2 Yakima Bob's admits that plaintiff filed the copyright registrations set out in
2 paragraph 4.2. Yakima Bob's denies each and every remaining allegation contained in
3 paragraph 4.2.

4 4.3 Yakima Bob's denies each and every allegation contained in paragraph 4.3.

5 4.4 Yakima Bob's admits that plaintiff filed the copyright registrations set out in
6 paragraph 4.2. Yakima Bob's admits that plaintiff manufactured signs for various Bob's
7 locations. Yakima Bob's denies each and every remaining allegation contained in paragraph 4.4.

8 4.5 Answering paragraph 4.5, Yakima Bob's lacks information and belief with respect
9 to the allegations regarding transfer agreements but expressly denies that plaintiff has ownership
10 interests or a copyright in the Yakima Bob's signs. Yakima Bob's denies each and every
11 remaining allegation in paragraph 4.5.

12 4.6 Yakima Bob's lacks information or belief with respect to the allegations in
13 paragraph 4.6 and therefore denies them.

14 4.7 Answering paragraph 4.7, Yakima Bob's lacks information and belief with respect
15 to the allegations in paragraph 4.7 and therefore denies them.

16 4.8 Yakima Bob's lacks information and belief with respect to the allegations in
17 paragraph 4.8 and therefore denies them.

18 4.9 Yakima Bob's admits that TSP bid on signs for the Yakima location, admits tha
19 plaintiff's bid was not accepted and that the parties communicated via e-mail, the contents of
20 which speak for themselves.

21 4.10 Answering paragraph 4.10Yakima Bob's admits that Eagle Signs performed the
22 sign work at the Yakima location, Yakima Bob's denies the remaining allegation in paragraph
23 4.10.

24 4.11 Yakima Bob's denies each and every allegation contained in paragraph 4.11.

25 4.12 Yakima Bob's denies that plaintiff has any intellectual property rights in the art
work or configuration of any signs, and therefore denies any allegation contained in

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paragraph 4.12 that plaintiff had any rights to assign to anyone, or that BBB or anyone else needed to obtain plaintiff's approval to use any of the at-issue artwork. In the alternative, to the extent plaintiff has any intellectual property rights in the design or configuration of BBB signage or branding, BBB has an irrevocable implied license in any such works in its franchising. Brich Bay Bob's therefore denies each and every allegation contained in paragraph 4.12.

4.13 Yakima Bob's denies each and every allegation contained in paragraph 4.13.

4.14 Yakima Bob's denies each and every allegation contained in paragraph 4.14.

4.15 Yakima Bob's denies each and every allegation contained in paragraph 4.15.

4.16 Yakima Bob's denies each and every allegation contained in paragraph 4.16.

4.17 Yakima Bob's denies each and every allegation contained in paragraph 4.17.

V. TSP'S CAUSE OF ACTION – COPYRIGHT INFRINGEMENT

5.1. Yakima Bob's restates and incorporates by reference the answers, admissions and denials set out in response to paragraphs 1.1-4.17.

5.2. Yakima Bob's denies each and every allegation contained in paragraph 5.2.

5.3. Yakima Bob's admits that plaintiff wrongfully registered copyright registrations for various signs relating to BBB. Yakima Bob's denies each and every remaining allegation contained in paragraph 5.3.

5.4. Yakima Bob's denies that plaintiff has any intellectual property rights in the art work or configuration of any signs, and therefore denies any allegation contained in paragraph 5.4 that plaintiff had any rights to assign to anyone, or that BBB or anyone else needed to obtain plaintiff's approval to use any of the at-issue artwork. In the alternative, to the extent plaintiff has any intellectual property rights in the design or configuration of BBB signage or branding, Yakima Bob's has an irrevocable implied license in any such works and Yakima Bob's actions have been within the scope of its implied license. Yakima Bob's therefore denies each and every allegation contained in paragraph 5.4.

5.5. Yakima Bob's denies each and every allegation contained in paragraph 5.5.

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5.6. Yakima Bob's denies each and every allegation contained in paragraph 5.6.

5.7. Yakima Bob's denies each and every allegation contained in paragraph 5.7.

5.8. Yakima Bob's denies each and every allegation contained in paragraph 5.8.

5.9. Yakima Bob's admits that plaintiff wrongfully alleged that it had rights in the at-issue artwork. Yakima Bob's denies each and every remaining allegation contained in paragraph 5.9.

VI. PLAINTIFF'S PRAYER FOR RELIEF

6.1 Yakima Bob's denies that plaintiff is entitled to the relief it seeks;

6.2 Yakima Bob's denies each and every allegation in Plaintiff's Complaint that Yakima Bob's has not expressly addressed.

AFFIRMATIVE DEFENSES

By way of further answer to Plaintiff's Complaint, Yakima Bob's alleges the following affirmative defenses:

1. Plaintiff has failed to state a claim upon which relief can be granted.

3. Plaintiff's claims are barred by the doctrines of waiver.

3. Plaintiff's claims are barred under the doctrine of unclean hands.

4. Plaintiff's claims are barred as it has committed copyright misuse, inequitable conduct and otherwise abused the copyright process.

6. Plaintiff's claims are barred based upon equitable estoppel, waiver, detrimental reliance, release, and other applicable equitable defenses.

7. Plaintiff's claims are barred because it has no right, title or interest in any "copyrightable" material, as the at-issue art is utilitarian, constitutes BBB's trademark, is not original nor creative as to plaintiff, and otherwise not subject to any copyright protection in the name of plaintiff.

9. Plaintiff's claims are barred because to the extent that the at-issue artwork is subject to copyright protection in the name of plaintiff, as part of its dealings with plaintiff,

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Yakima Bob's is acting within the scope of implied irrevocable licenses to use BBB artwork its brand and trademark and to create derivatives of the at-issue artwork for franchise use without first obtaining the consent of or further compensating plaintiff.

10. Plaintiff's claims are barred because to the extent that the at-issue artwork is subject to copyright protection, Defendant Bob's Burger and Brew and/or others were the authors, or at least joint authors, of such work.

12. Yakima Bob's reserves the right to state additional affirmative defenses based upon continuing discovery and investigation.

PRAYER FOR RELIEF

WHEREFORE, Yakima Bob's respectfully requests this Court enter judgment in its favor:

- (1) dismissing Plaintiff's Complaint with prejudice;
- (4) awarding Yakima Bob's their attorneys' fees and costs.

DATED this 8th day of July, 2010.

BETTS, PATTERSON & MINES, P.S.

By /s Daniel L. Syhre
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CERTIFICATE OF SERVICE

I, Daniel L. Syhre, hereby certify that on July 8, 2010, I electronically filed the following:

- **Defendants Jeff Roberts And Yakima Bob's Burger And Brew Llc's Answer To Plaintiff's First Amended Complaint For Copyright Infringement; and**
- **Certificate of Service;**

with the Court using the CM/ECF system which will send notification of such filing to the following:

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DATED this 8th day of July, 2010.

BETTS, PATTERSON & MINES, P.S.

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